

Implementing a "broadcast flag" that would prohibit recording of flagged HDTV broadcasts is uncalled for. The reasons for this are simple:

1. Television broadcasts are allowed by law to be recorded for personal uses by consumers. HDTV is high definition, but still television. Television has had a long history (since the 1970's) of being able to be recorded for time-shifting and personal viewing purposes. Please refer to FCC rulings on Sony VCR's for more information and how it has been confirmed a right (even under DMCA) for users to record television broadcasts.

2. There is no direct payment scheme to copyright holders from consumers for (HD)TV broadcasts to warrant copyright protection. The main reason movies or other programs are given copyright protection technologies is to ensure that consumers are properly paying for viewing copyrighted material. However, what is the payment for HDTV material? It is the advertising. The consumer DOES NOT pay any fee directly to copyright holders for viewing television (even HDTV) material.

3. The distribution channel of broadcasts does not warrant copyright protection for ensuring untainted viewing. One of the consumer benefits of copyright protection is the assurance that copyrighted works are in their original form and not altered by malicious entities or eroded in quality. However, the nature of broadcast television (even HDTV) makes such an argument laughable. If the copyright holders cannot trust themselves to provide quality programming without erosion of quality or alteration by malicious entities when they broadcast it, then there is no copyright protection technology (nor will there be) that can solve their problem.

4. HDTV is not a "subscription service" that must be paid for and protected. This relates to (2). As an example, cable television is a private subscription service that is offered only to paying members. Such a private network supports a copyright protection technology to prohibit non-members from diluting the network resources for paying subscribers. Such technology in this case is beneficial to consumers, ensuring network resources for quality viewing of material. However, broadcasts have no subscription service base and place no burden on one consumer for another's viewing of the broadcast. Therefore, there is no warrant for copyright technology on broadcasts for ensuring quality viewing of the material.

In conclusion, the nature of broadcasts (radio, VHF, UHF, HDTV, etc) make copyright protection technology a moot point. The only effect it has on consumers is to deny them rights enjoyed even under the DMCA for viewing broadcast material when it is most appropriate for the consumer and not the network distributor. Any argument against this would fall within one of the four points discussed above. As they are discussed, such arguments are not accurate, nor are they even applicable to placing such a burden on consumers and stripping them of their rights.

Please contact me for further information or comments.

